

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 26TH NOVEMBER 2007 / 5TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 3413 of 2007()

CRIME NO. 476/07 OF THRISSUR TOWN EAST POLICE STATION
CRLMC.2173/2007 of SESSIONS COURT, THRISSUR
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REVN. PETITIONER:

M.K.MOHAMMED ASLAM,S/O. KUNJI MOHAMMED,
MADATHIPARAMBIL HOUSE, NATTIKA, THIRSSUR.

BY ADV. SRI.M.K.DAMODARAN (SR.)
SMT.P.I.REZIYA
SRI.GILBERT GEORGE CORREYA

RESPONDENTS: PETITIONER

STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 26/11/2007, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

R. BASANT, J.

Crl.R.P.No. 3413 of 2007

Dated this the 26th day of November, 2007

ORDER

This revision petition has been filed by the petitioner, who is the first accused in Crime No.476 of 2007 of Trichur Town East Police Station, which is registered alleging commission of the offences punishable, inter alia, under Sections 120B, 420 and 468 I.P.C. The petitioner was granted bail by the learned Chief Judicial Magistrate on the very day when he was arrested and produced. The State filed an application before the learned Sessions Judge under section 439(2) Cr.P.C. That petition was allowed and bail granted by the learned Chief Judicial Magistrate was cancelled by the learned Sessions Judge. This revision filed under Section 397 r/w. 401 Cr.P.C. is directed against the said order cancelling bail.

2. The petitioner is the first accused in the crime. Altogether there are eight accused persons. The crux of the allegations is that the petitioner/A1, as the Managing Director of

a company, of which his brother-in-law/A2 is a Director, had applied for loan from the Trichur branch of the Kerala State Co-operative Bank. The third accused was offered as a surety for the loan transaction and an amount of Rs.294 Lakhs was availed as loan from the said bank. It was realised later that the third accused is a non-existent person and the title deeds produced in his name were all forged documents. No such documents were registered at all at the office of the Sub Registrar and false, fake and forged documents were produced in the name of the third accused, who offered himself as a surety and offered the said property as security.

3. The first accused, claiming to be the Power of Attorney holder of the third accused, had himself executed the necessary and relevant documents on behalf of the third accused. Later the officials of the bank realised the fraud and a complaint was filed before the police. Investigation is in progress. Eight accused persons have already been arrayed as accused. A1, 5, 6 and 7 have already been arrested and enlarged on bail. A2 and 4 are not available for arrest. A8 is no more. A3 as stated earlier, is a non-existent person. The

petitioner/A1, as stated already, was arrested at 9 a.m. on 21.8.2007 and was produced before the learned Judicial Magistrate later on the same day. The learned Magistrate by order, a copy of which is Annex.I, had directed release of the petitioner subject to conditions. It is thereupon that the State preferred Crl.M.C. 2173 of 2007 before the Sessions Judge under Section 439(2) Cr.P.C. to cancel the bail.

4. The learned counsel for the petitioner submits that the learned Sessions Judge lacks jurisdictional competence under Section 439(2) Cr.P.C. to entertain a challenge against an order passed by the learned Chief Judicial Magistrate granting regular bail. It is further contended that even assuming that the learned Sessions Judge had powers under Section 439(2) Cr.P.C. to cancel the order granting bail to the petitioner by the learned Chief Judicial Magistrate, the jurisdiction was not properly exercised by the learned Sessions Judge. The said order is liable to be set aside and the petitioner may be permitted to continue on bail, it is urged.

5. The learned Prosecutor, on the contrary, submits that the learned Chief Judicial Magistrate had erred grossly in granting regular

bail to the petitioner. Investigation was not complete at all. The third accused, who was offered by the first accused as a surety, is found to be a non-existent person. The records show that the petitioner had claimed that the third accused is a relative of his. On behalf of the third accused it was the petitioner who executed the documents claiming to be the Power of Attorney holder of the third accused. The conduct of the first accused also leaves little to be desired. Showing a fake address, he had applied for anticipatory bail before the learned Sessions Judge, Ernakulam. In that application he had joined the second accused also as one of the applicants. The second accused later claimed that he had not filed any such application. Thereupon the petitioner wanted the second accused to be removed from the array of petitioners in that application. In any view of the matter, the learned Chief Judicial Magistrate had erred grossly and perversely in granting bail to the petitioner on the date when he was produced before the learned Magistrate, submits the learned P.P.

6. Under Section 439(2) Cr.P.C. the Sessions Judge does certainly have jurisdictional competence to cancel the bail granted by

the learned Chief Judicial Magistrate and commit the accused person to custody. The counsel contends that Section 439(2) Cr.P.C. can be invoked by the learned Sessions Judge only if there are intervening circumstances which show that the liberty granted to an indictee has been misused by him. I am afraid, the contention that the court lacks jurisdictional competence under Section 439(2) Cr.P.C. cannot be accepted in the light of the very specific statement of the law in the decision in **Gurcharan Singh & ors v. State (Delhi Administration)** (AIR 1978 SC 179). The following passage in paragraph 16 makes the position crystal clear:

“If, however, a Court of Sessions had admitted an accused person to bail the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily therefore, to that Court. The State may as well approach the High Court being the superior Court under S.439(2) to commit the accused to custody. When however the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existed, it is futile for

the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Sessions vis-a-vis the High Court. ”

7. The Supreme Court had said so vis-a-vis a Sessions Court and the High Court. The same is the situation in the present case where the superior Sessions Court is approached by the State under Section 439 (2) Cr.P.C. for cancellation of an improper order passed granting bail to the petitioner by the subordinate Chief Judicial Magistrate. The law is thus clear that against an improper order granting bail passed by a subordinate Court the aggrieved/State can approach the superior courts - High Court or the Sessions Court, under Section 439(2) Cr.P.C. and in an appropriate case such bail granted can be cancelled by such superior Court.

8. It is thus evident that if the Chief Judicial Magistrate grants bail improperly, the State can certainly approach the learned Sessions Judge to invoke the powers under Section 439(2) to cancel the bail already granted. Such request is made not on the basis that the liberty

has been abused by the accused or that any subsequent event has arisen. Such cancellation is sought on the sole ground that the bail was granted improperly.

9. Powers under Section 439(2) Cr.P.C. is certainly wide enough to enable the State to approach the superior courts - Sessions Court or High Court - and complain about the improper grant of regular bail by the subordinate courts. In that view of the matter, the contention that a revision should have been filed before the learned Sessions Judge and not an application under Section 439(2) Cr.P.C. cannot obviously be accepted.

10. Coming to the facts of the case, I do note that the learned Sessions Judge has passed a detailed order advertng to all relevant circumstances. In the remand report, the Investigating Officer had opposed the prayer for bail. Merely on the ground that the Prosecutor in charge before the court of Chief Judicial Magistrate did not oppose the grant of conditional bail, the learned Chief Judicial Magistrate has obviously erred grossly and perversely in granting bail to the petitioner. The learned Magistrate must have taken note of the fact

that the third accused - allegedly a non-existent person - had not been traced at all. The learned Chief Judicial Magistrate must have taken note of the fact that the documents produced in the name of the third accused are all non-genuine. The learned Chief Judicial Magistrate ought to have noted that the petitioner herein had claimed to be the Power of Attorney holder of the non-existent third accused. The learned Chief Judicial Magistrate must also have taken note of the fact that the petitioner herein had claimed that the third accused is a relative of his. The learned Chief Judicial Magistrate must have further noted that the petitioner was the beneficiary of the Crime. The dimensions of the crime - siphoning out about 274 lakhs of rupees from a co-operative institution fraudulently, should also have been considered by the learned Chief Judicial Magistrate. The learned Chief Judicial Magistrate could not have omitted to note that the investigation was at a very early stage. Accused 2 and 4 very important links in the Crime have not been arrested so far. It is crucial to note that the above circumstances continue to be existing even now.

11. The learned counsel for the petitioner relying on various precedents including,

(1) **Ramcharan v. State of M.P.** ((2006) 1 SCC (Cri) 511;

(2) **Dolat Ram and ors. v. State of Haryana** (1995 SCC (Cri) 237)

(3) **Thulaseedharan Nair v. State of Kerala** (2006 (4) KLT 471)

contends that the learned Sessions Judge should not have invoked the jurisdiction under Section 439(2) Cr.P.C. lightly. There can be no dispute regarding the propositions that the quality of consideration while considering an application for bail and an application for cancellation of bail are different. Stronger reasons must be insisted by the superior courts before cancelling an order granting bail than while rejecting an application for bail at the first instance. I must also note that the quality of consideration is different when application is made to cancel bail under Section 439(2) Cr.P.C. on the ground that liberty has been abused by the accused after his release and when an application is made on the ground that the subordinate court has

improperly granted bail. In the facts and circumstances of this case I agree with the learned Sessions Judge that the order granting bail suffers from gross error that the correctional content of the jurisdiction under Section 439(2) Cr.P.C. deserves to be invoked.

12. There is a contention that no reasonable opportunity was granted to the petitioner/accused to defend the petition under Section 439(2) Cr.P.C. The affidavit of the Investigating Officer was filed not along with the petition under Section 439(2) Cr.P.C. but only belatedly, it is submitted. I find that there is no failure or breach of the principles of natural justice resulting from that circumstance.

13. I am, in these circumstances, of the opinion that the learned Sessions Judge was absolutely justified in coming to the conclusion that the bail was granted to the petitioner improperly and such improper grant of bail is liable to be interfered with by invoking the jurisdiction under Section 439(2) Cr.P.C. In any view of the matter, I am satisfied that invoking the revisional jurisdiction of supervision and correction vested in this Court it is not necessary to interfere with the impugned order cancelling the bail granted to the

petitioner. I do particularly further note that on the crucial aspects referred to in paragraph 10 above there is no crucial change of circumstances even till this day.

14. This revision petition is in these circumstances dismissed. The petitioner shall surrender before the learned Chief Judicial Magistrate on or before 1.12.2007, failing which necessary steps shall be taken by the police to arrest the petitioner and produce him before the learned Chief Judicial Magistrate.

(R. BASANT)
Judge

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